

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division

FILED

SEP 24 2018

CLERK, US DISTRICT COURT
NORFOLK, VA

BRIAN FARABEE, :
Petitioner, :
v. : CIVIL ACTION NO. 2:16cv661
HAROLD W. CLARKE, Director, :
Virginia Department of Corrections, :
Respondent. :
-----:

FINAL ORDER

Before the Court is a Petition for a Writ of Habeas Corpus filed pursuant to 28 U.S.C. § 2254 and the Respondent's Motion to Dismiss the Petition. The Petition alleges violation of federal rights pertaining to Petitioner's sentence and confinement in the Virginia Department of Corrections due to his revocation hearing on November 20, 2015.

The Petition was referred to a United States Magistrate Judge for report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed July 6, 2018, recommends dismissal of the

Petition without prejudice. ECF No. 26. Petitioner timely filed objections to the Report and Recommendation. ECF No. 31. The Respondent has not responded to the Petitioner's objections and the time to do so has expired.

The Court, having reviewed the record and examined the objections filed by Petitioner to the Report and Recommendation, and having made de novo findings with respect to the portions objected to, does hereby **ADOPT** and **APPROVE** the findings and recommendations set forth in the Report and Recommendation filed July 6, 2018. It is, therefore, **ORDERED** that the Respondent's Motion to Dismiss, ECF No. 10, be **GRANTED**, and that the Petition, ECF No. 1, be **DENIED** and **DISMISSED WITHOUT PREJUDICE** to Petitioner's right to refile another petition only if and when he receives authorization from the United States Court of Appeals for the Fourth Circuit. It is further **ORDERED** that judgment be entered in favor of the Respondent.

The Petitioner may appeal from the judgment entered pursuant to this Final Order by filing a written notice of appeal with the Clerk of this court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510, within thirty (30) days from the date of entry of such judgment.

The Petitioner has failed to demonstrate a substantial showing of the denial of a constitutional right, and therefore,

the Court declines to issue any certificate of appealability pursuant to Rule 22(b) of the Federal Rules of Appellate Procedure. See Miller-El v. Cockrell, 537 U.S. 322, 335-36 (2003).

The Clerk shall forward a copy of this Final Order to Petitioner and to counsel of record for the Respondent.

It is so **ORDERED**.

/s/ MWD
Mark S. Davis
United States District Judge

MARK S. DAVIS
UNITED STATES DISTRICT JUDGE

Norfolk, VA
September 24, 2018